

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA
TRIBUNAL INTERNATIONAL DU DROIT DE LA MER



2004

Public sitting

held on Monday, 6 December 2004, at 10 a.m.,
at the International Tribunal for the Law of the Sea, Hamburg,

President L. Dolliver M. Nelson presiding

The “Juno Trader” Case
(Application for prompt release)

(Saint Vincent and the Grenadines v. Guinea-Bissau)

Verbatim Record

Uncorrected
Non-corrigé

Present:

President	L. Dolliver M. Nelson
Vice-President	Budislav Vukas
Judges	Hugo Caminos
	Vicente Marotta Rangel
	Alexander Yankov
	Soji Yamamoto
	Anatoli Lazarevich Kolodkin
	Choon-Ho Park
	Paul Bamela Engo
	Thomas A. Mensah
	P. Chandrasekhara Rao
	Joseph Akl
	David Anderson
	Rüdiger Wolfrum
	Tullio Treves
	Mohamed Mouldi Marsit
	Tafsir Malick Ndiaye
	José Luis Jesus
	Guangjian Xu
	Jean-Pierre Cot
	Anthony Amos Lucky
Registrar	Philippe Gautier

Saint Vincent and the Grenadines is represented by:

Mr Werner Gerds, Döhle Assekuranzkontor GmbH & Co KG, Hamburg,
Germany,

as Agent;

and

Mr Syméon Karagiannis, Professor, Faculty of Law, Université Robert
Schuman, Strasbourg, France,
Mr Vincent Huens de Brouwer, Lawyer, Eltvedt & O'Sullivan, Marseilles,
France,

as Counsel;

Mr Lance Fleischer, Director, Juno Management Services, Monaco,,
Mr Fernando Domingos Tavares, Director, TCI Bissau/Transmar Services
Limited, Bissau, Guinea-Bissau,

as Advisers.

Guinea-Bissau is represented by:

Mr Christopher Staker, Barrister, Bar of England and Wales, London, United
Kingdom,

as Agent, Counsel and Advocate;

Mr Octávio Lopes, *Chef de Cabinet*, Ministry of Fisheries,

as Co-Agent;

and

Mr Ricardo Alves Silva, Miranda, Correira, Amendoeira & Associados, Lisbon,
Portugal,
Mr Ramón García-Gallardo, Partner, S.J. Berwin, Brussels, Belgium,

as Counsel and Advocates;

Ms Dolores Dominguez Perez, Assistant, S.J. Berwin, Brussels, Belgium,

as Counsel;

Mr Malal Sané, Coordinator, National Service of Surveillance and Control of
Fishing Activities,

as Adviser.

1 THE CLERK OF THE TRIBUNAL: The International Tribunal for the Law of the Sea
2 is now in session.

3
4 THE REGISTRAR: (No interpretation)

5
6 THE PRESIDENT: This is a public sitting pursuant to Article 26 of the statute of the
7 Tribunal to hear the parties present their arguments and evidence in the *Juno Trader*
8 case. I call on the Registrar to read out the submissions of St Vincent and the
9 Grenadines as contained in its application.

10
11 THE REGISTRAR: (Interpretation) The Applicant has put the following questions.
12 St Vincent and the Grenadines request the Tribunal to make the following orders and
13 declarations:

- 14
- 15 (a) A declaration according to which the International Tribunal for the Law of the
16 Sea has jurisdiction by virtue of Article 292 of the United Nations Convention
17 on the Law of the Sea 1982 known as the Convention for Admissibility
18
 - 19 (b) A declaration whereby the Respondent countered the Convention requesting
20 release of the *Juno Trader*;
21
 - 22 (c) Its crew are not authorised pursuant to Article 73, paragraph 2 and are not
23 reasonable in terms of 73(2)
24
 - 25 (d) An order requesting the Respondent to release the *Juno Trader* from
26 detention and its officers and crew without posting a bond or any other
27 financial security and in that event requesting the Respondent to return the
28 bond or security posted;
29
 - 30 (e) Alternatively, an order requesting the Respondent to release the *Juno Trader*
31 from detention and to release its officers and crew as soon as the owner of
32 the vessel posts a bond or other financial security in an amount determined to
33 be reasonable by the Tribunal in view of the particular circumstances of the
34 present case;
35
 - 36 (f) An order in that last event prescribing the form of the aforementioned bond or
37 other security
38
 - 39 (g) An order requesting the Respondent to rescind the confiscation of the cargo
40 of fish found on board the *Juno Trader*.
41
 - 42 (h) An order requesting the Respondent to pay the Applicant's costs.

43
44 THE PRESIDENT: By letter dated 18 November 2004, a copy of the application was
45 transmitted to the Government of Guinea-Bissau. The Respondent did not avail
46 itself of its right under Article 111(4) of the rules of the Tribunal to submit a statement
47 in response. In accordance with the rules of the Tribunal, copies of the application
48 are being made accessible to the public as of today. The Tribunal notes the

1 presence in court of Mr Werner Gerdts, Agent of St Vincent and the Grenadines, and
2 Mr Christopher Staker, Agent of Guinea-Bissau. I now call on the Agent of the
3 Applicant to note the representation of St Vincent and the Grenadines.

4

5 MR GERDTS: I should like to introduce the delegation of the Applicant to the court.
6 We have counsel, Professor Syméon Karagiannis, from the Université Robert
7 Schuman in Strasbourg, professor for public law; co-agent and counsel, Mr Vincent
8 Huens de Brouwer working as lawyer for the firm Eltvedt & O'Sullivan. We have two
9 advisers with us, Mr Lance Fleischer, representing the owners of the *Juno Trader*, a
10 Portuguese national, and Mr Fernando Tavares as adviser. He is the correspondent
11 of the Applicant in Guinea Bissau and a national of that country.

12

13 THE PRESIDENT: I now call on the Agent of the Respondent to note the
14 representation of Guinea-Bissau, Mr Christopher Staker.

15

16 MR STAKER: Mr President, distinguished members of the court, it is an honour for
17 me to have been entrusted by the Republic of Guinea-Bissau with the task of
18 representing it as Agent in this case. I also have the privilege to appear in these
19 proceedings as counsel and advocate. To my immediate left is the co-agent of the
20 Republic of Guinea-Bissau, Mr Octávio Lopes, *Chef de Cabinet*, Ministry of
21 Fisheries. As counsel and advocates with us we have to his immediate left
22 Mr Ricardo Alves Silva, of Miranda, Correira, Amendoeira & Associados, Lisbon, and
23 to his left Mr Ramón Garcia-Gallardo, a partner at SJ Berwin, Brussels. In the row
24 behind we are further assisted to my left by Mr Malal Sané, Co-ordinator,
25 National Service of Surveillance and Control of Fishing Activities, and to his right by
26 Mr Dolores Dominguez Perez, also of SJ Berwin in Brussels as our advisers.
27 Mr President, that concludes the introduction of our delegation.

28

29 THE PRESIDENT: Following consultations with the Agents of the parties, it has
30 been decided that the Applicant, St Vincent and the Grenadines, will be the first to
31 present his arguments and evidence. Accordingly, the Tribunal will hear St Vincent
32 and the Grenadines first this morning. In the afternoon the Tribunal will hear Guinea-
33 Bissau. I now call on Professor Karagiannis to begin his statement.

34

1 MR KARAGIANNIS (Interpretation): Mr President, honourable members of the
2 International Tribunal for the Law of the Sea, it is an immense honour for me to plead
3 before you the case of the State of St Vincent and the Grenadines for this case of
4 the prompt release of the *Juno Trader* vessel and its crew.

5

6 The vessel and its crew at present are to be found in Bissau, the capital of the
7 Republic of Guinea-Bissau. It is that state that at present detains the vessel and
8 some members of its crew. I confess that it is difficult for me to plead against the
9 Republic of Guinea-Bissau because for serious reasons I am particularly fond of this
10 western African country.

11

12 First, men of my generation cannot forget the struggle of the people of Guinea-
13 Bissau when they fought for liberation from colonialism, which was upon them until
14 1973 when the territory was liberated. Thanks to the valour, courage and spirit of
15 sacrifice of men and women led by the unforgettable Cabral(?) a great revolutionary
16 and humanist. Then, for further serious reason, allow me to say that as a professor
17 of international law in daily life I am pleased with the international conduct of the
18 Republic of Guinea-Bissau. On at least three occasions that republic has
19 demonstrated its respect of international law and sought peaceful settlement of
20 disputes. Guinea-Bissau, indeed, has had cases heard before courts of arbitration
21 and when responding challenging the arbitral awards, it addressed international
22 justice, in particular the International Court of Justice. From this I can conclude that
23 Guinea-Bissau is a state which does its utmost to conform with international law.

24

25 I do have some regrets with the case at hand. It is a case of prompt release, and I
26 will go into the details of the full case here, but St Vincent and the Grenadines
27 submitted its application for the prompt release of the vessel and crew on 18
28 November 2004, as the Registrar recalled earlier.

29

30 The President of the Tribunal set the orders for the hearings on 1 and 2 December
31 and, to our utter surprise, we have noted that at the very last minute before we were
32 ready to depart for Hamburg, Guinea Bissau requested a delay for its Statement in
33 Response to be submitted. I can say outright that it is not the fault of my esteemed

1 colleague, Mr Staker, that he was appointed at the very last minute, but the Republic
2 of Guinea Bissau could perhaps have shown a little more diligence in these affairs.

3

4 The consequence of these matters is that the hearing was postponed until today and
5 tomorrow. A further surprise appears when we see that the Republic of Guinea
6 Bissau has not as yet submitted a Statement in Response to our application. It is the
7 first time, I would say, that your Tribunal has found itself in these circumstances,
8 where it has the arguments of the Applicant state but does not have the arguments
9 of the Respondent.

10

11 Mr President, it is difficult for us and for me personally to plead a cause without being
12 aware of what Guinea Bissau thinks of all this. Furthermore, I must confess that I
13 have still not understood why I have been attributed this great honour to plead this
14 case before you and this Tribunal. This is a case that should have been settled
15 some time ago in the simplest manner possible between representatives of the ship
16 owner, the owner of the *Juno Trader* vessel and the local authorities of Guinea
17 Bissau. Thus, it is not clear to me how it is that we are now standing before your
18 Tribunal.

19

20 If I may, I would like briefly to recall the facts of this case. It is not a matter of
21 reading through each and every word of my written text. A vessel known as the
22 *Juno Warrior*, which has the flag of St Vincent and the Grenadines, was peacefully
23 fishing a certain catch in the exclusive economic zone of Mauritania, with a proper
24 fishing licence issued by the Mauritanian authorities, approximately at the end of
25 August and during the first half of September 2004. At the end of the fishing season,
26 in other words at the time of the expiry of the licence, following orders of the owner of
27 the *Juno Warrior*, the catch is transhipped to a vessel known as the *Juno Trader*,
28 that is, the vessel in which we will be interested in this case. Such transhipment
29 takes place within the exclusive economic zone of Mauritania and the transhipment
30 is explicitly authorised by the Mauritanian authority. The transhipment begins on 19
31 September and is concluded on 23 September 2004. Following that, the *Juno*
32 *Trader* leaves the Mauritanian waters, crosses Senegalese waters and The Gambian
33 waters and is headed for Ghana.

34

1 There is a Ghanaian company, Unique Concerns Limited, which, on the basis of bill
2 of lading that are referred to, purchased the catch of the *Juno Warrior*, which is now
3 on board the *Juno Trader*. The *Juno Trader* is headed for the Ghanaian port of
4 Tema to land the catch for its legal owner, the Ghanaian company, Unique
5 Concerns.

6
7 A totally unforeseen incident takes place within the exclusive economic zone of
8 Guinea Bissau. The vessel is boarded -- we will hear of the conditions -- and
9 redirected towards the Port of Bissau on 26 September. Thus, the *Juno Trader* is in
10 the port and present as of 27 September. Therefore, as you can see, time is moving
11 on for the ship owner and the crew as well, with Christmas coming up, also, as we
12 will see, for the owner of the cargo, the Ghanaian company, Unique Concerns
13 Limited, as mentioned.

14
15 I would first like to look briefly at some developments in this area regarding the
16 jurisdiction of this Tribunal. The United Nations Convention on the Law of the Sea
17 was ratified by both states concerned, the coastal state, the Republic of Guinea
18 Bissau, and the flag state, St Vincent and the Grenadines. The Convention came
19 into force for these two states on the date on which the Convention came into force,
20 namely, 16 November 1994.

21
22 Furthermore, the *Juno Trader* is detained in the port immediately, with the detention
23 of members of its crew, with the exception of one wounded in a shooting, who was
24 returned to his country of origin, Russia, thanks to the assistance of the Spanish
25 vessel *Esperanza del Mar*, and gratitude is due to the crew of that ship.

26 Jurisdiction for prompt release is automatic under Article 292 of the Convention
27 when within a 10-day period no other court has been declared to have jurisdiction
28 following agreement of the two parties. The 10-day period has long since passed. It
29 can be concluded that the jurisdiction of the Tribunal is established.

30
31 On further questions of jurisdiction, I would add that the state of St Vincent and the
32 Grenadines alleges that the Republic of Guinea Bissau to date has not proceeded
33 with the prompt release of the *Juno Trader* vessel, and several members of the crew
34 are still held in detention, deprived of their freedom to come or go. The release of

1 the last members of the crew held in detention stands in spite of the posting of a
2 bond with the authorities of Guinea Bissau by the local representatives of the owner
3 of the *Juno Trader*.

4
5 As for the admissibility of this case, there is no doubt that sometimes there is a little
6 flexibility and vagueness, and we are not sure whether that is in the field of
7 jurisdiction or admissibility, but I prefer to say here and now that the release of the
8 vessel still has not come about, and there is worse to come. By a very recent
9 document dated 3 December 2004, when reasonably we could have hoped at the
10 very last moment for the release of the vessel and release of the crew, what we learn
11 is that the Guinea Bissau authorities have confiscated the *Juno Trader* vessel.
12 Perhaps someone could tell us that the letter was sent to the authorities of Guinea
13 Bissau a little late, but I do not think that that argument could seriously be presented,
14 for the simple reason that not much time passed between the detention of the vessel
15 and the crew and the point in time when the bank guarantee letter was posted.

16
17 However, in any case, I must say right away that the representative of the ship
18 owner of the *Juno Trader* was kept in complete ignorance for a long time, not of what
19 happened to their vessel but of the legal situation of their vessel. They did not know
20 what the authorities of Guinea Bissau were charging the captain of the vessel with. It
21 was impossible to find out what their complaints were, in spite of many different
22 steps that we took. We shall be able to come back to that but, in any case, you will
23 find an explicit description of that in the text of our application.

24
25 Last, but not least, please allow me to say that the flag state of St Vincent and the
26 Grenadines was never notified by the Guinea Bissau authorities of the detention of
27 the vessel, nor of the detention of 19 crew members, except for the wounded crew
28 member. All were detained. In Article 73 of the Montego Bay Convention, it is
29 stated explicitly that the coastal state must without delay notify the flag state.

30
31 In any case, I do not want to go on at great length with arguments of possible delay
32 of posting the financial guarantee letter. It is true that in the *Comoco* case, the
33 Tribunal stated explicitly that Article 292 of the Convention of the Law of the Sea
34 does not request the flag state to submit an application for prompt release of the

1 vessel and the crew at any particular point in time after the detention of the vessel.
2 This is paragraph 54 of the *Comoco* ruling.

3

4 After briefly developing the jurisdiction of this tribunal and the admissibility of the
5 application, I quite sincerely move on to tell you what our objective is. As the flag
6 state, our objective is to get your Tribunal to achieve the prompt release of the
7 vessel, the prompt release of the crew members who are still detained, and to
8 achieve this without any bond or financial security. You will see Articles 292 and 73
9 of the Convention state explicitly that there should be a reasonable bond or other
10 reasonable financial letter guarantee. Even in the eighteenth century,
11 mathematicians told us that zero was also a figure. It is one of the figures. In any
12 case, if, to our great regret, your Tribunal cannot accept our application, our request,
13 of zero bond, zero security, then we would like to request it to order the prompt
14 release of the vessel and of the crew members through a bond or other financial
15 security that is very low – a symbolic one – if international courtesy makes it
16 necessary to have something a little more than zero. This may appear daring to you,
17 in the light of your jurisprudence. If we have to justify this, then let me give you the
18 factors for this justification.

19

20 Justification is found in the text of Article 73 of our Convention. Paragraph 2 of
21 Article 73 talks about the prompt release of the vessel and of the crew. Why? This is
22 prompt release in those cases where the vessel has been detained and the crew
23 members have also been detained so that the coastal state could carry out the
24 exercise of the sovereign rights of exploration, conservation and management of
25 living resources of the exclusive economic zone.

26

27 It is true for many states, not only African states. You are familiar with the difficulties
28 of France or Australia in preserving their living resources in the respective waters
29 against systematic pillaging by trawlers and captains that are not always very
30 scrupulous. St Vincent and the Grenadines is a coastal state itself.

31

32 On the part of the all coastal states fighting against pillaging of their living resources,
33 I would like to pay tribute both to the government officials of Guinea Bissau and to
34 the men who, at the risk of their very lives, try to protect their living resources, the

1 living resources of the Republic of Guinea Bissau. Those resources are extremely
2 important financial resources for that state, which is not one of the richest states in
3 the world, to say the least. I do pay tribute, for the second time, to the government
4 officials of Guinea Bissau, but I do have a small problem.

5

6 Article 73 imposes measures of detention of the vessel and the crew when there is
7 illicit fishing. In this case, there was no illicit fishing. There was no fishing at all.
8 There could not have been any fishing for a very good reason, Mr President: the
9 *Juno Trader* is not a trawler; it does not have fishing nets; it does not have any
10 fishing gear. The *Juno Trader* is a reefer, that is, specialised in carrying frozen fish,
11 in particular. It does seem difficult to me to mix up a trawler with a big reefer. It
12 seems to me that those two ships are built quite differently.

13

14 If we look at further details, then we will see that the coastal guard of Guinea Bissau
15 found on board the *Juno Trader* a cargo of frozen fish. Let me repeat: it is a reefer.
16 Where did that cargo come from? As I said earlier, that cargo came from the
17 *Juno Warrior*, which fished those fish in the exclusive economic zone of Mauritania.

18

19 There are a great many documents certifying this. Most of those documents, at least
20 all those that we have, were deposited and the members of the Tribunal and our
21 honourable opponents from the delegation of Guinea Bissau have been able to look
22 at them; they have been able to deal with them. Those documents vary in nature.

23

24 First of all, I would like to quote the delivery acceptance reports which were
25 co-signed and dated by the Captain of the *Juno Warrior*, that is the trawler, and the
26 Master, Master Potarykin, of the *Juno Trader* to which that cargo was transhipped in
27 Mauritanian waters. These delivery acceptance reports are very detailed with
28 respect to the species of fish transported. They even give the quantity and the day
29 of transhipment is pointed out. Those documents are dated from 19 September to
30 23 September 2004.

31

32 I do not think it is worth reading out those documents which you all have available to
33 you. However, there were other documents certifying the origin of the cargo, most of
34 which was frozen, and being carried by the *Juno Trader*. Those documents come

1 from the Atlantic Pelagic Company, which is more or less the manager of the vessel.
2 Here you have several documents available to you in English and French. The
3 Atlantic Pelagic Company entrusts its local representative in Mauritania to monitor
4 and check the proper transshipment of the cargo on to the *Juno Trader*. As I said
5 earlier, the frozen cargo as well as a few bags of fishmeal were sold by the owner of
6 the *Juno Trader* to a Ghanaian company, Unique Concerns Ltd..

7

8 There are several bills of lading. If I am not mistaken, there are three of these bills of
9 lading. You can look at the originals. They are made out in English very explicitly
10 giving the amounts, the species of fish, et cetera. Those three bills of lading were
11 signed in Hull, United Kingdom, on 23 September. Again, I do not think it is worth
12 reading out these numbers and very technical administrative papers to you.

13

14 When the situation in Guinea Bissau started to be delayed, we do not really know
15 what the Government of Guinea Bissau was looking for, and so we asked the official
16 authorities of the Islamic Republic of Mauritania to attest officially to the origin of the
17 cargo. We have two certificates of which you have the texts. Since they are rather
18 short, I will just read a few brief excerpts to you.

19

20 The first certificate is signed and dated 7 November 2004 in Nouadhibou in
21 Mauritania. This comes from the Ministry of Fisheries and Maritime Matters. It is to
22 the Fisheries Control Committee. It was requested by the Atlantic Pelagic Company.
23 That was a letter of 4 November. (Quote not checked) Re ... the signed delegates
24 for the control of fisheries at sea, certify by this letter that the Pelagic vessel *Juno*
25 *Warrior* transhipped on 19 September 2004 1,184 pelagic fish and 112 tonnes of fish
26 meal on to the *Juno Trader* vessel in compliance with the authorisation for
27 transshipment presented on 18 September 2004 to the delegation in control of
28 fisheries by this company. The fish, the object of this transshipment, is indeed
29 Mauritanian. This was used to see what the legal rights were.

30

31 We also requested other documents from the authorities of Mauritania. On 9
32 November, two days later, they delivered another certificate, again from the
33 Fisheries Directorate, Ministry of Fisheries and Maritime Economy, which stated: "I,
34 the undersigned, Cherif Ould Toueileb, Director of Industrial Fishing, certify that the

1 *Juno Warrior* vessel worked under licence number 04/1083 of 19 August 2004, valid
2 for the period 20 August 2004 to 18 September 2004 under the agreement signed on
3 15 February 2004 between the Ministry of Fisheries and Maritime Economy and the
4 company, Frozen Foods International Limited. As can be seen from the certificate
5 from this delegation dated 7 November 2004, the *Junor Warrior* transhipped
6 1,183,83 tonnes of pelagic fish and 112 tonnes of fishmeal on 19 September to the
7 cargo carrier *Junor Trader*". Once again, we have a certificate to validate what is
8 legal.

9
10 These certificates from the competent authorities of the Islamic Republic of
11 Mauritania are official, so I do not see how Guinea-Bissau could have any doubt as
12 to the authenticity or original character of these documents. Nonetheless, as time
13 went on and the *Juno Trader* remained detained in the Port of Bissau, the owner of
14 the cargo, this time the Ghanaian company, Unique Concerns Limited, became quite
15 concerned about what was happening to the goods it had bought and which it was
16 desperately waiting for in the Port of Tema, Ghana. The Ghanaian partners
17 understand the difficulties of the owner of the *Juno Trader*, but it is not their problem
18 if the *Juno Trader* has certain legal or administrative problems with the government
19 officials of Guinea-Bissau. I, in turn, understand the concerns of Unique Concerns
20 Limited.

21
22 That company then became proactive and in a letter addressed to the local
23 representative of Lloyd's in Guinea-Bissau, the agent in Bissau, Mr Rosa dated
24 28 October 2004 stated – I will read this in English – "As owners of the cargo, the
25 consignment of" the figures are not easy to read "frozen fish and 112,000 tonnes of
26 fish meal belongs to us and must be delivered to us in Tema. Any quantity from the
27 said bills of lading discharged in Guinea-Bissau will be a breach of international law
28 and will be viewed as theft. We reserve our right to protect our interest legally in the
29 unlikely event our cargo is not delivered to us in Tema, Ghana." Signed, for Unique
30 Concerns Limited.

31
32 In these various documents, one figure that has become a magic figure is constantly
33 repeated; that is, 1183,830 tonnes of pelagic fish, frozen, as stated, and 112 tonnes
34 of fish meal. Those amounts are also mentioned in the official report of the scientific

1 committee, CIPA, entrusted by the authorities of the Ministry of Fisheries of Guinea-
2 Bissau to establish, as far as possible, the origin of the cargo of the *Juno Trader*. At
3 this point I do not want to challenge the methods used by CIPA to verify the origin of
4 the *Juno Trader's* cargo. If I understood correctly, the scientists from Guinea
5 compared species that can usually be found in the waters of the exclusive economic
6 zone of Guinea-Bissau with species they found on board the *Juno Trader*. I really do
7 not know how scientific such a method might be but I think that it is at the limit of
8 what can be considered scientific.

9

10 The report of those Guinea-Bissau scientists states that the fish found aboard the
11 *Juno Trader* was similar to the fish that one commonly finds in the exclusive
12 economic zone of Guinea-Bissau. But there is a problem here. Similarity does not
13 mean identity and the local officials tell us that there are cartons on board the *Juno*
14 *Trader* with species that cannot be found in the waters of Guinea-Bissau. In
15 passing, I should like to state that that would not mean that the Government officials
16 of Guinea-Bissau should confiscate everything, even those cartons of frozen fish
17 that, according to the local scientists, cannot be found in the waters of Guinea-
18 Bissau.

19

20 Furthermore, I must also state that the exclusive economic zone of Guinea-Bissau is
21 not totally separated or isolated. The fish move around freely and go from one zone
22 at high sea to another. Of course, there is a similarity between different species of
23 fish in different exclusive economic zones of western Africa. I should add that it is
24 only the waters of Senegal – Ghana's waters are too narrow – that separate the
25 waters of Mauritania from those of Guinea-Bissau.

26

27 The scientific report of the local scientists presents an argument in our favour. It
28 states that on board the *Juno Trader* they found the same amount, that magic figure
29 of 1,183,830 and 112 tonnes. So, is it possible that the *Juno Trader* could finish the
30 transshipment on 23 September and then, by magic, get rid of its cargo – nobody
31 knows where or who got it – and then between the 26th when it enters the exclusive
32 economic zone and it is boarded by the coastal guards, how could it catch more fish
33 and fill its hold once again? It would have to be extremely careful to ensure that the
34 amount that it transhipped and the amount that it now fished would be exactly this

1 magic figure of 1,183,830 tonnes of fish and 130 tonnes of fish meal. Nobody, not
2 even our dear government officials of Guinea-Bissau, was able to find on board the
3 *Juno Trader* any basic fishing gear, or any equipment to process the fish into
4 fishmeal. So, all of this, as regards logic, is most disconcerting.

5

6 Perhaps the Guinea-Bissau authorities were not aware of the origin of the cargo
7 found on board the *Juno Trader* in the waters of Guinea-Bissau. With the
8 representative of the owner knowing that the *Juno Trader* had administrative
9 difficulties with the Guinea-Bissau Ministry for Fisheries, they then clarified the
10 matter enlightening the authorities, letting them know the origin of the cargo. My
11 colleague, the local representative of the ship-owner, Mr Fernando Tavares, took
12 almost all the steps concerned. I should like to ask that he be allowed to address the
13 Tribunal for a few minutes and run through the various steps he took. However,
14 before allowing him to do so, if I may I should like to add one point.

15

16 It is not just Mr Tavares who performed these tasks. Other people addressed the
17 administrative authorities of Guinea-Bissau seeking to clarify the origin of the cargo.
18 As was said earlier, the legal owner of the cargo, as at 23 September on the basis of
19 three bills of lading, the Ghanaian company, Unique Concerns Limited, also took
20 steps, especially through the Lloyd's agent representing them locally, Mr Rosa. Mr
21 Rosa in turn addressed a letter to the relevant administrative authorities of Guinea-
22 Bissau, Dr Malal, in particular, Director General of FISCMAR the administrative
23 authority for fisheries. The letter is signed by the Lloyd's agent, Mr Rosa, dated in
24 Bissau 1 November 2004. I should like to read certain extracts from the translation –
25 not the original Portuguese – in English:

26

27 "Dear Sir, ... by the owners of those cargos to intervene to clarify the situation
28 and, if possible, as is desired, to resolve it. We will not reiterate the matter or
29 the background, which must be well known to you. But we wish to draw your
30 attention to the documents which we take the liberty of enclosing for your
31 consideration. The enclosed documents certify that the cargo was loaded in
32 Mauritanian territory. This being so, and knowing the excellent relations and
33 co-operation which Guinea-Bissau maintains with Mauritania, it would be
34 helpful in our view if you would use official channels to confirm or otherwise

1 the truth of that fact. This approach, we are sure, would prevent any negative
2 outcome to this incident, which we regard as serious for any of the parties
3 who might be found guilty. We are grateful for your collaboration on which we
4 rely and of course remain at your disposal. Yours faithfully”,

5

6 and then there is a stamp, “HP Rosa, Agent, Lloyd’s”.

7

8 Evidently, HP Rosa, local agent for Lloyd’s in Bissau, as a name may not mean
9 much to you. I can inform the Tribunal that Mr Rosa is not only the Lloyd’s agent; he
10 is also and has been since 2003 the President of the Republic of Guinea-Bissau. If
11 the President himself in his professional position seeks to give advice to the
12 administrators in the Ministry of Fisheries, who can then let them know the true
13 origin? Mr Fernando Tavares is the one who is able and I should like to ask if Mr
14 Tavares can address the Tribunal on this matter.

15

16 THE PRESIDENT: Mr Karagiannis, your request is granted. I now give the floor to
17 Mr Tavares.

18

19 MR TAVARES (Interpreted): As regards the goods on board the vessel, as local
20 representative, following detention I took several steps before the authorities of
21 Guinea-Bissau. I am a national. First, as a professional, I took steps to inform the
22 authorities as to the origin of the cargo. I shall not address the question of the
23 truthfulness of the documents received from the Mauritanian authorities. However,
24 there are official documents from the Mauritanian Ministry certifying that the goods
25 were loaded in the exclusive economic zone waters of Mauritania. That information
26 was forwarded in due course to the Ministry for Fisheries through FISCMAR, the
27 government office on maritime control. At the same time the Ministry for Fisheries
28 was informed of the cargo, with the manifest cargo copies, the bills of lading, SGS
29 certificates and all other proof of loading of the cargo transhipped between the *Juno*
30 *Warrior* and the Juno Trader in Mauritanian waters. Despite all our efforts and all the
31 documentation sent with copies to Mr Rosa, the representative of the insurers of the
32 party purchasing the cargo there was no challenge, nor a positive or negative
33 response on the question of the origin.

34

1 We have all the letters written to FISCMAR, the Ministry for Fisheries, with the
2 appendices proving origin. However, there was no reaction from the local authorities
3 to the information given in writing to the Guinea-Bissau authorities. I have at your
4 disposal documents with English language translations that I am willing to submit.
5 So, as regards the origin of the cargo, we were most attentive to transmission of
6 documentation and formal proof to the authorities in Guinea-Bissau.

7

8 MR KARAGIANNIS (Interpretation): Thus the origin of the disputed cargo on board
9 the *Juno Trader* is established. There is a barrage of documents, some more official
10 than others, certifying such origin. Nonetheless, local authorities will hear nothing. It
11 is impossible to let it be known to them that this time they did not detain an
12 unscrupulous vessel as has occurred. This time they got it wrong.

13

14 Mistakes are possible; to err is human. However, it is also possible to acknowledge
15 that one has erred. If that had been the case of some administrators in Guinea-
16 Bissau, we would not be standing before your Tribunal.

17

18 On 18 October the authorities adopted an Act, numbered 12, explaining the illegal
19 conduct of the *Juno Trader*. This was then publicised on 19 October and it was
20 followed by Minute No. 14 from the Interministerial Fisheries Commission of the
21 Republic of Guinea Bissau. In these documents, Minutes 12 and 14, there are
22 reasons and justifications given for the measures taken by the local authorities.
23 There are three. There is a personal fine of the captain for attempt of flight, and we
24 will address that matter in a moment. Then there is the confiscation of the cargo
25 held on board the *Juno Trader* because such cargo was allegedly fished or
26 transhipped illegally in the exclusive economic zone of Guinea Bissau. They allege
27 that it was illegally fished or possibly transhipped.

28

29 On fisheries, we said earlier that it was impossible. The *Juno Trader* is simply not
30 equipped to do that. Even the British parliament cannot transform a man into a
31 woman. Why is it that the authorities in Guinea Bissau want to transform a reefer
32 into a trawler? Nonetheless, assuming that it is not illegal fishing that is implicitly
33 retained by Minutes 12 and 14, we can turn to a different Minute instead of fishing –
34 transhipment. I have addressed the matter with some humour.

1

2 Transhipping is like marriage; it takes two. Thus, let us look for the other, the vessel
3 that might have fished legally or illegally or that in any case could contain cargo, that
4 is, 1,183 tons and so on -- you know that figure by now -- which such vessel Minute
5 12 refers to *Flipper 1*. The ship *Flipper 1* was supposedly alongside the *Juno Trader*
6 when the latter was boarded.

7

8 Checks: The authorities approach the *Flipper 1* and it is fishing with a proper fishing
9 licence for the waters of Guinea Bissau. There is no other ship mentioned. There is
10 possibly a record of the coastguard of Guinea Bissau. I do not have it and I do not
11 know where it could be. The Decree No. 2000, regulating fishing in the Guinea
12 Bissau waters, obliges the coastguard to draw up a log. I have no knowledge of
13 such a log. Furthermore, Minute 14, which endorses Minute 12, imposes a heavy
14 fine on the owner of the *Juno Trader*. I assume that this would be for illegal fishing
15 and/or transshipment, and I shall no longer address such accusations. These are
16 accusations, furthermore, that are not formulated in clear terms, but rather only
17 through allegation. Thus, I cannot understand exactly what it is that is claimed of the
18 *Juno Trader*. Is it illegal fishing, transshipping or something else? It might be
19 something else, Mr President, and that something else is the key to the mystery in
20 the conduct and attitude of the authorities of Guinea Bissau. As you can see, I am
21 putting on my psychologist's hat right now in order to look for some kind of
22 reasonable substantiation for the authorities in Guinea Bissau.

23

24 In Minutes 12 and 14 mention is made of attempt to flee – *Tentativa de fuga* in
25 Portuguese. This attempt at flight would be the responsibility allegedly of the
26 Captain, who is the Master of the vessel. The Master would not circumvent orders of
27 the coastguard or maritime authorities. Such orders were to halt the vessel and the
28 orders came from a zodiac, which is a very small boat, which sought to have the
29 master of the *Juno Trader* understand that the engines of the vessel had to be
30 stopped. It is true that the Master did not halt the ship. He continued on his route.
31 Minute 12 qualifies this as an attempt to flee. As I have said, this is a clear element
32 in the reasoning of the administrative authorities of Guinea Bissau. Anyone fleeing
33 supposedly has something to hide. Somebody fleeing supposedly has committed an

1 illegal act. I would say that the reasoning is insufficient, possibly hasty. I put it to the
2 Tribunal to follow this through.

3

4 If in the deserving circumstances one is faced with men trying to tell you something
5 and these are men who you cannot hear, who you do not understand, men who
6 cannot communicate other than by waving madly about, and there are also visible
7 weapons being held and within five or 10 minutes (depending on the version) such
8 weapons are actually used, and with the shooting one of the seamen was wounded
9 and repatriated, thanks to the assistance of the *Esperanza del Mar*, back to Moscow,
10 why not flee when fear for the vessel is justified, when fear for one's life, as well as
11 the lives of the crew members for whom one is responsible, is justified?
12 Furthermore, grounds for fear exist if it is known that year after year there are more
13 and more acts of piracy in certain parts of the world, including the proximity of West
14 African coasts. Lloyds and other entities are regularly sending out information of
15 these growing numbers in Africa and in particular West Africa.

16

17 The Agent of St Vincent and the Grenadines, Mr Vincent Huens de Brouwer, our
18 adviser, has had an opportunity to speak with members of the crew while held in
19 detention in Guinea Bissau. There are written records signed by members of the
20 crew who were interviewed, and they refer to the general impression following the
21 reactions of the captain to the zodiac and also reactions from other members of the
22 crew. This is all in your files and it is also mentioned in our Application, but, just
23 briefly, here is what the radio officer, Mr Oleksandr Romanov, of Ukrainian
24 nationality, states. It is in perhaps faulty English, but it is English that one can
25 understand. Here is the radio officer:

26

27 (*Tape recording*) After 16 hour 55, I saw speedboat on starboard ---- with five men
28 on board ... During attack I did not notice any sign of board vessel. Afterward, I read
29 "Marine Nationale Guinea Bissau", but during attack I did not read this signature.
30 (*end of tape recording*)

31

32 The second officer, Mr Karedin, of Russian nationality, in his written statement taken
33 by Mr Huens de Brouwer, says:

34

1 (Tape recording) 17 o'clock of 26 September 2004, I heard shooting and I
2 immediately went to navigation bridge, meet Captain, Chief Mate, Radio Officer.
3 Shooting lasted approximately five, seven minutes with speedboat changing side.
4 Radio officer sent distress signal. I sent a pirate attack SOS by VHF channel 16, "I
5 have attack pirate, please call me". I received immediately reply from *Esperanza del*
6 *Mar* ---- saying was about 10/12 miles from *Juno Trader*. (end of tape recording)

7

8 Another crew member, the main engineer, Makgimkin, gave similar proof, and in the
9 testimony that I have already mentioned it is added:

10

11 (Tape recording) First sailor ---- saying that they were shooting at us. Maybe attack
12 lasted 10, 15 minutes. I noticed that mention speedboat was doing stop gestures
13 when on starboard side. Captain ordered me to send the distress signals. I sent two
14 distress calls, one to Dakar port, one to ---- port, but no answer. At 17 o'clock 28
15 minutes, I confirmed my distress MSG, now finished attack ---- (end of tape
16 recording)

17

18 The Master of the ship, as well as the First Mate, thought that it was a real pirate
19 attack. One does not alert the whole world, they went all the way to France close to
20 Calais, they received distress signals stating "Pirate attack, sailors", a Spanish
21 vessel that was closer than any others approached, the Spanish hospital vessel,
22 *Esperanza del Mar*, in the report that we have put into your records, states that there
23 was one injured crew member on board the *Juno Trader*, and the pictures in your
24 files also show some of the impact of the bullets. It is true that the *Esperanza del*
25 *Mar* had good relations with the speedboat of the national navy, next to which the
26 zodiac was, and it was the cause of all the fear and concern on board the *Juno*
27 *Trader*.

28

29 However, this time the clear signals on board were distinctive. It was not the same
30 thing with the little zodiac that caused all this problem. The police launch was much
31 clearer, and Mr Romanov, whose remarks I read earlier, said that he was able to see
32 just a tiny sign indicating that it was the national Guinea Bissau Navy. Why did he
33 see it? Because Romanov was the only one who was forced to go on board the

1 speedboat or the police launch -- I am not sure which one -- to be taken to Bissau.
2 He was the only one. He was separate from the crew of the *Juno Trader*.

3

4 Mr President, let us now give ourselves the opportunity of listening to what the
5 Master of the *Juno Trader*, Master Potarykin, had to say. We would like him to
6 testify here.

7

8 THE PRESIDENT: We ought to have a recess at 11.45, but the Tribunal will now
9 hear Mr Potarykin, who is being called by the Applicant as a witness pursuant to
10 Article 78 of the rules of the Tribunal. Before calling the witness, I first request that
11 the interpreter appear before the Tribunal to interpret the witness's statement from
12 Russian into one of the official languages of the Tribunal.

13

14 The Interpreter was sworn

15

16 THE PRESIDENT: Thank you. I now call on the Interpreter to make the declaration
17 set out in Article 85, paragraph 4, of the rules of the Tribunal.

18

19 The Interpreter made the declaration

20

21 THE PRESIDENT: Thank you. I request that Mr Potarykin appear before the
22 Tribunal.

23

24 NIKOLAY POTARYKIN, sworn

25

Examined by MR KARAGIANNIS

26

27 Q (*Interpretation*) Master Potarykin, one first question, if I may, concerning the
28 incident aboard the *Juno Trader* in the exclusive economic zone of Guinea Bissau ---

29

30 THE PRESIDENT: Mr Karagiannis, I am sorry to interrupt you but the interpreter is
31 not yet upstairs. (*Short pause*)

32

33 MR KARAGIANNIS: Can we start now?

34

35 THE PRESIDENT: Yes.

1

2 MR KARAGIANNIS: As I was saying earlier, I would like to ask you some questions
3 about the incident of a serious nature that occurred with the vessel of which you are
4 the Master, the *Juno Trader*, within the exclusive economic zone of Guinea Bissau.
5 I am referring in particular to 26 September 2004. Several members of your crew
6 and you, in written evidence that you signed, speak about a speedboat that
7 approached on 26 September, and I would like you to answer the following question
8 now. In your personal opinion, what was the outside appearance of the people on
9 the speedboat? How were they dressed, for example?

10
11 (Technical difficulties were experienced with hearing the interpretation)

12
13 (Short adjournment)
14
15

16 THE PRESIDENT: We will continue with the witness.
17

18 MR KARAGIANNIS (Interpretation): Thank you, Mr President. As understood,
19 technology permitting, I would like to put several questions to the Master of the
20 *Juno Trader*, Mr Nikolay Potarykin.

21 (To the witness) Captain, on 26 September, you were commanding the *Juno Trader*
22 ship within the exclusive economic zone of Guinea Bissau. You were boarded by
23 a zodiac; you were approached by a zodiac. I would like to ask if you could give
24 a rapid description. We know that the zodiac was a zodiac but could you please
25 describe the external appearance of those occupying the zodiac.

26 A (Interpretation) A speedboat of the zodiac type approached us from the
27 starboard. With hand signs, they demanded that we stop. They did not fly any flag,
28 no signs, and five people were in that speedboat. They were wearing civil togs and
29 they had sub-machine guns and only one had semi-camouflage and a hat. The
30 speedboat caught up to us and ahead of us and then reached us from the port side
31 and also with hand signs demanded we stop. There was no connection by radio,
32 and so during the three to five minutes I could not even explain what to do and they
33 started shooting at us. Therefore, I decided that those were pirates. I could not
34 make any comparisons. Before, I had never encountered such cases. I do not know
35 exactly how pirates look but to my understanding that was a pirate case. The
36 speedboat with the speed of 20 to 25 knots and my ship with the speed of only
37 10 knots could not go away. There was no reason to start shooting at us from the
38 speedboat. We could not run away anyway. That is all I can say on this point.
39

40 Q Thank you, Captain. Perhaps you could give us some further details on your
41 personal reaction. What did you do and what was the situation on board the
42 *Juno Trader*? How did you live those moments?

43 A (No interpretation)
44
45

1 (Interpretation)...and one member of the crew was wounded in his leg. Our ship
2 gave the signal of distress and it was accepted by the hospital ship from Spain. Our
3 calls on the 16th channel nobody answered before that and after the distress call,
4 *del Mar*, the hospital ship, answered and they were approximately 10 miles away to
5 the south-west.
6

7 MR KARAGIANNIS: Thank you, Captain, I do not have further questions I would like
8 to put. I feel that I have received sufficient in the way of replies.
9

10 Cross-examined by MR STAKER
11
12

13 MR STAKER: Mr President, I have just a few very specific questions and then my
14 colleague Mr Ramón Garcia-Gallardo would also like to pose an additional question
15 or two.

16 (To the witness) Captain, I would like to ask you: did you inform the authorities of
17 Guinea Bissau when your ship crossed into the waters of Guinea Bissau?

18 A (Interpretation) No, such information was not given because of the
19 International Convention ruling. I had a free pass as of right, a free passage as of
20 right.
21

22 Q Do you usually travel through the waters of Guinea Bissau in the course of
23 your voyages?

24 A I have not had any contacts since the time of working with the tanker *Amour*
25 and on 26 September we had had no contacts with any ships.
26

27 Q When the inspectors of Guinea Bissau came on board your ship, at first they
28 asked you for your logbook and engine book, did they not?

29 A At first they hit in the face, and, as long as the crew members of the Spanish
30 ship were on board, I stood under this threat of being shot from their machinegun,
31 and, only after the wounded sailor was taken away and the Spanish ship left, about
32 15 people went on board. They were in camouflage togs and also with machine
33 guns. Then I myself offered them to see my logbook and also cargo documents and
34 also to take into account the way from the tanker up to the point and to calculate the
35 time for this, but nobody wanted to talk to me on this point. Only one Bissau
36 afterwards – finish.
37

38 Q When you were first asked to go to Bissau, you refused to do so, did you not?

39 A The first moment when three people from the zodiac went aboard our ship,
40 one was in civil clothes and the other two were in camouflage togs. The military men
41 threatened me with their firearms and to shouted where were the shrimps, where
42 were the fins of the sharks. I stood and I could not understand why they asked such
43 questions and, further on, after the *Delmar* sailed away and then on the ship flying
44 the flag of Guinea Bissau ---
45

46 Q I am sorry. I do not wish to interrupt the explanation but I just wanted a very
47 brief answer to a very specific question. When you were asked to take the ship to
48 Bissau, at first you refused, did you not?

49 A Yes. At first I declined and asked about the explanation and causes of such
50 an action. I did not have the chart. There were no water charts and therefore

1 I refused, but when the crew was surrounded and one man was taken from us,
2 I found myself in a very difficult situation – impasse.

3

4 Q I just have one other question. Your ship is presently in Bissau and you need
5 members of your crew to look after and maintain the ship. Certain members of the
6 original crew have since left Bissau and have been replaced by other people who
7 have come to Bissau in order to replace them and to form part of the crew to look
8 after the ship.

9 A The ship is at Bissau port and the crew takes care of its technical condition
10 and security, and also the cargo is on board and it is necessary to take care of the
11 cargo. I was forced to send away a few crew members because of their
12 psychological condition, but so far nobody came in replacement. Perhaps there are
13 some technical problems and I would like to say that it was not so easy to send the
14 people away. The passports were taken from us and, without any explanation; they
15 are at the disposal of somebody under a lock, no matter how long and how much
16 I talked about that, and, one more point, for a whole month the crew members were
17 under military arrest. You understand how the psychological situation of the crew
18 was. Only recently this situation changed for the better, but additional members of
19 the crew had not yet arrived.

20

21 MR STAKER: My colleague will have a few further questions.

22

23 MR GARCIA GALLARDO: The legal arguments of the respondent will occupy the
24 whole afternoon, but due to the allocation of time, we need to come now to the facts.
25 I have a very few questions for the witness, Mr Potarykin.

26

27 Cross-examined by MR GARCIA GALLARDO

28

29 Q Mr Potarykin, you are certainly a senior person and you are also an
30 experienced master?

31 A (No reply)

32 Q I repeat, you are certainly a senior person and an experienced master, are
33 you not?

34 A Already 26 years on the bridge as ship's master without any –

35 Q (No microphone)

36 A Would you please repeat your question once again?

37

38 Q Did you operate reefer vessels for a certain number of years?

39 A I have already answered that for 26 years I have been the captain, the master
40 and –

41 Q This is not the first time you have operated in West African with a reefer
42 vessel?

43 A Yes, on board this ship for 12 years I worked in the vicinity of African coasts.

44

1 Q And it is not the first time that you passed throughout the exclusive economic
2 area of Guinea-Bissau.

3 A That was for the second time. The first time I crossed the zone in 1992. The
4 second time, this year, from south across the Mauritanian waters, I was heading to
5 Ghana.

6
7 Q You are an experienced professional. You know that some documents need
8 to stay on board the vessel, certainly?

9 A Once again, please.

10
11 Q I am not asking for any – (No microphone) You know that some documents
12 stay on board the vessel. There is a technical problem.

13 A No, please go on.

14
15 MR GARCIA-GALLADO: I shall try again. I was just telling Mr Potarykin that some
16 documents need to stay on board.

17
18 THE WITNESS: This is true.

19
20 MR GARCIA-GALLARDO: He really knows that some documents need to stay on
21 board. (To the witness) Do you know that these documents in this case were
22 provided extremely late, not precisely by you but by your representatives in Bissau?

23 A I did not understand the question.

24
25 Q Can you confirm that the documents were not found on board?

26 A What documents are you talking about?

27
28 Q Two documents: a copy of the bill of lading and the certificate of origin of the
29 fishing boat.

30 A You have wrong information. All the loading documents needed were on
31 board and they were, at the first request, passed over to the authorities.

32
33 Q If that was the case, why did the Mauritanian authorities issue a certificate on
34 7 November to confirm something that was already, as you mentioned, on board?

35 A All loading documents which are compiled according to the rules at time of
36 loading - all the documents were on board. The bill of lading was absent on board.
37 Usually, the bill of lading is compiled by the sender of the cargo and is sent over to
38 the recipient of the cargo and this bill I did not have on board, but all the other
39 documents on the basis of which the bill of lading is compiled were on board.

40
41 Q You mentioned that the bill of lading was on board and now you say that the
42 bill of lading was not on board. So, there is something that does not work.

43 A No, you misunderstood me. All the documents on lading, except for the bill of
44 lading – these documents are the basis for the compilation of the bill of lading and
45 they were present and they still are. A lot of copies were given to the authorities of
46 Guinea-Bissau.

47
48 Q And on these documents there is not any certificate of origin. To sell the boat
49 you need the certificate of origin.

1 A Certainly, I do not understand this. The following documents are all present
2 on board and the traditional inspection is present. All these documents are on board
3 or were given to the authorities at their request.

4
5 Q I am not talking about private documents between the sellers, the vendors,
6 and the owner. I am just talking about official documents issued by any competent
7 authority where the fish has been caught.

8 A I asked you what documents you needed concerning the load or other ship's
9 documents on board.

10
11 Q I have one last question. You can see a photograph of the cartons on board
12 the vessel. Is it normal for you that there is no reference to the fishing area? It is
13 normal practice at this level to reflect in any carton the fishing area or the origin of
14 the goods? Do you think that that is normal?

15 A I think that it is your own opinion. Where the fishing takes place and the state
16 itself provides a licence, a certain number, it is enough. What else would you like to
17 see? I do not have any idea.

18
19 Q This number, according to the application made by St Vincent and the
20 Grenadines, is the IMO number, the International Maritime Organisation number, of
21 the vessel. There is no link to say that these goods come from Mauritania and there
22 is no certificate of origin.

23 A I am sorry; this question should be asked of the Government of Mauritania,
24 which allows the making of such markings.

25
26 (The witness withdrew)

27
28 MR KARAGIANNIS (Interpretation): It is quite obvious that we are behind time, but
29 nonetheless, we had cross-examination of the witness by the Respondent state,
30 which I think should be put on record.

31
32 Please allow me now to refer to the proceedings that have already started at the
33 local court of Bissau, the national court. That is the court which has jurisdiction over
34 this matter. As we saw earlier, Minutes 12 and 14 have imposed fines and even
35 confiscated the cargo that was on board the *Juno Trader*. That was an
36 administrative act and the local representatives of the ship owner requested the
37 regional court of Guinea-Bissau, at least initially, to suspend the effects of that
38 administrative minute.

39
40 The regional court of Bissau took a decision to stay all fines and any other measures
41 to be found in Minutes 12 and 14, so no fines for the captain; no fines for the ship
42 owner, cancellation of the measure to confiscate the cargo and, moreover, return of

1 the financial security that had been posted with the Government of Guinea-Bissau by
2 the ship owner and the flag state.

3
4 As the law states, the administration has to act legally and it is only after the fact that
5 the citizen can challenge the legality of the administrative minute. Of course, such a
6 challenge could mean that months or years could go by and in the meantime the
7 minute will continue to give rise to legal and material effects.

8
9 Fortunately for the individual, it is possible to request a competent judge to stay the
10 effects of the act. It is called the stay of execution. In the Roman Germanic law
11 system, which is the system of Portugal and hence that of Guinea-Bissau, the stay of
12 execution can only be ordered when there are consequences that are difficult or
13 impossible to repair and, over and above that, *prima facie* are to be seen with the
14 human eye. The competent judge notes that there are real problems with the legality
15 of the minute. A judge who obviously wants the state to continue working never
16 orders a stay of execution without great problems. It is a very serious act, even if
17 only provisional in nature.

18
19 The regional court of Bissau, upon the request of the ship owner's representative,
20 ordered a stay of execution of acts 12 and 14 as well as the return of the financial
21 security that had already been posted. One might say that that does not prove
22 anything as to the merits of the case, but the judge may look at the merits of the
23 case and arrive at a different opinion. However, it is obvious to the human eye, to
24 the local judge, that the minute is illegal *prima facie* at first sight that he ordered such
25 a stay of execution.

26
27 Of course, the Tribunal has been given the manuscript, the text, in Portuguese as
28 well as a translation, which is a little strange because first it was translated into
29 French then into English. The urgency of Article 292 forced us to do that. But the
30 Tribunal will see in this minute that the judge of Guinea-Bissau agrees with our
31 arguments as to the origin of the cargo and the illegality of the measures taken. I
32 forgot to mention that this minute is recent, dated 24 November.

33

1 So, what do we note on the ground? On the ground nothing is happening. *Inter alia*
2 the local judges ordered the return of all passports. Some passports were returned
3 but not all. Of course, the Guinean Government offices continue along the line. They
4 do not ensure that the fine is nullified and at the same time we get into a Kafka-like
5 world. The government officials, competent – with or without quotation marks – can
6 take the liberty of doing anything they want without in any way taking account of the
7 jurisprudence of their own country. To date, as far as we know, if something
8 happened this morning, that would be very welcome, but there is a total non-
9 execution, which is very surprising, of the ruling of the regional court of Bissau.

10

11 The combination of Article 292 and Article 73 – we do not refer to Article 220 and
12 226 – states that the International Tribunal for the Law of the Sea orders the prompt
13 release of the vessel and the crew members through a bond or other financial
14 security. What is the role of this bond?

15

16 It is quite clear: it must give a kind of backing for the possible future judgment of the
17 owner of the ship. So, a future decision as to the substance must not remain a dead
18 letter. Prosaically, it says that justice must have something to get its teeth into.

19

20 There are other very good considerations in your jurisprudence which refer to the
21 possibility in the future of the national judiciary finding satisfaction with respect to the
22 amount of the bond or other financial security.

23

24 Yet what do we note here? We note that the judiciary of Guinea Bissau found that
25 there is absolutely no illegality. It seems to me, unless I am mistaken of course, that
26 there has never been such a situation at this Tribunal. In some ways, it is not the
27 coastal state that causes problems to us, the flag state or the owner state. Guinea
28 Bissau is playing its role quite honourably, as I stated in my initial tribute to that
29 Republic, but we note that the different bodies of that state no longer manage to
30 communicate among themselves. We have seen that there have been some
31 problems of communication between the administration of the coastal inspection with
32 the ship going into the coastal waters, but I did not know that there was also a lack of
33 communication between the local judiciary and the local government officials.

34

1 It is difficult to believe that your Tribunal will be more catholic than the Pope, more
2 strict and severe than the judiciary of Guinea Bissau itself, because, if Guinea Bissau
3 is a normal state, then it is the judge who has the last word, not some government
4 official in some ministry. In any case, I would also like to point out that, as you know,
5 the ship owner has already posted a P&I security, amounting to €50,000. The
6 reaction by the local administration of Guinea Bissau was identical to its reactions up
7 until now, that is, null and void. We would like to know what the government officials
8 think about this. We do not know whether they think that this is a high amount, not
9 high enough, null and void, or whether the form of the financial security is not to their
10 liking. We do not know any of this. We have not received any answers. Yet,
11 Mr President, we have done everything possible to set things straight with the
12 competent government officials of the Ministry of Fisheries.

13

14 If I may, I would like to say that the local representative of the ship owner,
15 Mr Tavares, could, if you agree, shed some light on this more technical issue
16 concerning the form and the quality of the financial security and the reaction or lack
17 of reaction by the local authorities.

18

19 THE PRESIDENT: I give the floor to Mr Tavares.

20

21 MR TAVARES: (*Interpretation*) Thank you very much, Mr President. In view of the
22 detention of the vessel, it is normal that a bond be posted. What was proposed thus
23 to the central office was that a P&I bond be posted for the local authorities to allow
24 the immediate release of the vessel. However, quite some time prior to that, a letter
25 was sent to the Fisheries Commission to express an intention of acceptance of the
26 P&I bond, and the response was that only one type of bond is acceptable in the local
27 bank. Therefore, a P&I security was received for €50,000, which was placed before
28 the court in Guinea Bissau with a local authority, Mr Carlos Pederá(?). A copy of the
29 security for €50,000 was sent to the Ministry of Fisheries and the Minister of Justice
30 as a member of the Interministerial Fisheries Commission, those taking the decision.

31

32 Thus, I can assure you that, to date, this has been followed by no reaction regarding
33 the posting of the bond either way, yes or no. It is an extremely difficult situation. As
34 the local representative, I have had tremendous problems explaining to the company

1 that I represent there that those are the facts. We informed the parties, we took
2 steps with the establishment of the security, and normally you get a “yes” or “no”
3 reaction, but so far no such reaction has been received. That is the information that
4 is available on this matter. Thank you.

5

6 THE PRESIDENT: Thank you, Mr Tavares. I give the floor to Mr Karagiannis.

7

8 MR KARAGIANNIS: (*Interpretation*) Thank you, Mr President. Thus, we have seen
9 the reaction of local justice and it is, as we can see, very much in our favour. We
10 expected a positive reaction, as I said earlier, if only a partial one, from the
11 administration in Guinea Bissau.

12

13 As to reactions, on 3 December 2004, just a couple of days ago, we heard that the
14 local administration decided to confiscate the vessel. So far, it had been the cargo
15 alone that had been confiscated, but now it is the vessel itself. It is an extremely
16 surprising manner by which to comply with a decision of the local regional court.

17

18 As to your Tribunal, Mr President, in relation to such a national measure or semi-
19 national measure, because the judiciary does not follow the administration, I cannot
20 see you taking this as having any effect on the case. It is a fact similar to any
21 unilateral, national measure, as demonstrated by national and international courts in
22 their rulings. However, I would like to ask you to take time to examine such a
23 measure. The 3 December decision for confiscation of the vessel shows a contempt
24 on the part of the administration in Guinea Bissau, first, towards local and national
25 justice; secondly, towards the proceedings here in Hamburg now; and, thirdly,
26 towards your Tribunal.

27

28 Since the beginning of this case, the ship owner and the flag state have found
29 themselves in a series of *de facto* situations, and the administration has now put you
30 in the position of facing a *de facto* situation. Thus, solidarity results. I can also
31 understand that your Tribunal wishes to show solidarity towards justice in Guinea
32 Bissau, so poorly enforced by the administration locally.

33

1 There are two cases taking place at the same time. There is the Hamburg case and
2 the Bissau case. This has no legal significance, because it is a matter of prompt
3 release and release of the members of the crew remaining in a state of detention.
4 A careful reading of Article 292 clearly shows us that prompt release is a procedure
5 that is independent of any other national or international procedure. It is one that is
6 not in any way related to internal appeal processes. Your *Camouco* judgment clearly
7 explains this. You cannot wait months, let alone years, for appeals at domestic level
8 to be followed through before your Tribunal orders prompt release. I say “prompt”
9 release, not simply “release”. Thus, suspension cannot be given as an argument to
10 stand in the way of your future judgment.

11

12 Furthermore, we believe that we should address the fate of the cargo. The
13 procedure of prompt release is one that allows the movement of the vessel and its
14 normal use by the owner or others. Prompt release of the vessel or of the crew
15 cannot concern the cargo. On the basis of local Minutes 12 and 14, it was
16 confiscated. However, local justice stayed such decisions. Thus, I believe that your
17 Tribunal should address the legal status of the cargo.

18

19 Just briefly, if I may, on the practical side, as far as we know, the cargo is still on
20 board the *Juno Trader* vessel. It is still in a frozen state. The cargo was never
21 thawed, in spite of the order for confiscation from the local administration. The local
22 administration should have landed the cargo rapidly to store it in the port premises.
23 This, however, was not done, and the Master continued to tend to the cargo. It is of
24 a certain value and there is the possibility of legal problems ensuing for the ship
25 owner in this particular case.

26

27 It is normal procedure, as I am sure your Tribunal will, to order the prompt release of
28 the *Juno Trader*, and you can say that, on the basis of 292, that is where your task
29 ends and thus the *Juno Trader* may leave its place of detention, the port of Bissau –
30 and that to go where? No matter. It does not matter because its cargo has been
31 confiscated following local jurisprudence in the local court. However, I might recall
32 that since 24 September the cargo, the frozen fish and the fishmeal sacks, belongs
33 to someone, no longer the ship owner of the *Juno Trader* but rather a third party, the

1 Ghanaian company that has been mentioned several times, that is, Unique
2 Concerns Limited.

3

4 That company has written a letter, which could be seen as threatening and which is
5 becoming more and more menacing, addressed to the ship owner, the owner of the
6 *Juno Trader*. Thus, let us imagine that, thanks to your judgment, the *Juno Trader*
7 leaves the port of Bissau. At its next stop, that vessel could easily be subject to
8 seizure requested by the owner of the cargo that the *Juno Trader* will no longer be
9 able to deliver. Thus, prompt release potentially ordered through your judgment
10 would be an illusion or a provisional measure alone. The *Juno Trader* would enjoy
11 freedom for days or hours alone, depending on the diligence of the lawyers acting for
12 Unique Concerns. Thus, under the procedure of 292, you should also order the
13 release of the cargo confiscated (or not confiscated, depending on your ally) whether
14 it be the local administration or the local judiciary; it is up to you to choose.

15

16 In more general terms, I would like to say that this *Juno Trader* case is of interest
17 and will be of interest to a large number of states and ship owners because it boils
18 down to a question of freedom of navigation in the exclusive economic zone. The
19 exclusive economic zone, of course, is not the high seas. The exclusive economic
20 zone is not territorial waters either. This is a topic that was addressed at length by
21 the Third United Nations Conference on the Law of the Sea. Article 59 of the
22 Montego Bay Convention, with modest success, seeks to delineate the legal nature
23 of the exclusive economic zone.

24

25 THE PRESIDENT: Mr Karagiannis, I am sorry to interrupt you. How much time do
26 you need to end your pleadings this morning?

27

28 MR KARAGIANNIS: Five minutes.

29

30 THE PRESIDENT: Thank you.

31

32 MR KARAGIANNIS: As I was saying, it is basically a question of freedom of
33 navigation. Freedom of navigation must be assured in the EEZ if for no other reason
34 than to comply with that great compromise arrived at in the Third United Nations

1 Conference on the Law of the Sea, also for Article 58 of the Convention to apply.
2 Freedom of navigation holds not only in the case of sports vessels, third parties',
3 scientific and research or standard cargo vessels. Freedom of navigation, if I may,
4 applies to cargo vessels which are designed, to their misfortune, for the carriage of
5 frozen fish.

6

7 There is the question of costs incurred in this case on the Applicant. This is a case
8 that has occupied Guinea Bissau. I regret to say that it is the fault of the Republic of
9 Guinea Bissau. The judge performed his task; that is part of the administration. For
10 the sake of the cause, I would say that this is a case which is a heavy one for the
11 local Ministry for Fisheries and that your Tribunal should dot all the i's and cross all
12 the t's in this case by ruling that the Respondent should cover the procedural costs
13 incurred upon the Applicant who only sought to cross an economic zone peacefully.
14 In the future, should all the EEZs be avoided? The EEZs are almost a necessary
15 area for passage.

16

17 THE PRESIDENT: Thank you, Mr Karagiannis.

18

19 We have heard the Applicant this morning.

20

21 (The hearing rose at 1317 until 1500 hours)

22